

Office of Chief Counsel
Internal Revenue Service

memorandum

CC:NER:PEN:PHI:TL-N-7184-98

ASKline

date: **JAN 07 1999**

to: Chief, Quality Measurement Branch, Pennsylvania District

from: District Counsel, Pennsylvania District, Philadelphia

subject: [REDACTED] - Closing Agreement

THIS DOCUMENT INCLUDES STATEMENTS SUBJECT TO THE ATTORNEY-CLIENT PRIVILEGE AND THE ATTORNEY WORK PRODUCT PRIVILEGE. THIS DOCUMENT SHOULD NOT BE DISCLOSED TO ANYONE OUTSIDE THE IRS, INCLUDING THE TAXPAYER INVOLVED. LIMIT USE OF THIS DOCUMENT TO THOSE WITHIN THE SERVICE WORKING ON THIS CASE. THIS DOCUMENT IS SUBJECT TO I.R.C. § 6103.

This memorandum is in response to the Pennsylvania District's request for assistance in negotiating and drafting the attached Closing Agreement between the Commissioner and [REDACTED].

In negotiating and preparing the attached closing agreement, District Counsel has followed the regime established for Pattern Information Reporting Program (IRP) Closing Agreements for Understatement of Income on Forms 1099 by a Payer. An IRP closing agreement is an agreement made in writing between the Commissioner and a payer when a mass-error has been made that affects a high volume of information returns issued by that payer, but involves only an average de minimis amount of understated reportable income. The agreement serves to relieve the payer from having to file corrected information returns with the Service and from having to issue corrected payee statements. The agreement also relieves the payees from having to file amended returns.

Certain requirements must be satisfied before a closing agreement of this type may be entered into by the Service. First, payers must voluntarily bring reporting errors to the attention of the Service. If such errors are discovered by the Service, the Service may still enter into an agreement if it is in the best interests of the Government, the payer, and the payees. In this matter, [REDACTED] voluntarily brought the reporting errors to the attention of the District. Second, a payer cannot make the same or similar errors repeatedly, and repeatedly request or be granted an IRP closing agreement. In this case, [REDACTED] has never requested

relief for its reporting errors, or other similar errors. Third, the dollar amount of the average understated reportable income for the payees in question must be de minimis. This third requirement was also satisfied based on an analysis of the information provided to District Counsel by [REDACTED]. In addition, a listing must be provided by the payer reflecting the amount that should have been reported and the amount that was reported for each payee account. [REDACTED] also satisfied this requirement.

[REDACTED] serves as trustee for various common trust funds ("CTF") established for the collective investment of accounts for which it serves in a fiduciary capacity. The principal business activity of each such CTF is investing the assets of its fiduciary accounts. During [REDACTED], [REDACTED] was in the process of converting certain of its tax-related computer databases. Due to errors in certain computer software programs, and due to individual computer inputting errors, many of the information returns (Forms K-1) prepared by [REDACTED] for the CTF participants inadvertently contained errors. Specifically, certain capital losses were recorded as capital gains, and certain capital gains were never reported. These errors caused in excess of [REDACTED] CTF participants to incorrectly report their net capital gain or loss from the CTFs. The reporting errors caused some CTF participants to overstate or understate their net capital gain or loss. The amounts of the overstatements and understatements are reflected in the schedule ("Schedule A") attached to the closing agreement.

Both [REDACTED] and the Commissioner agree that it is in the best interest of the parties to avoid: (1) the potential administrative expenses associated with handling CTF participant inquiries following any reissuance of Forms K-1 for [REDACTED] to correct the reporting errors; (2) the potential administrative costs associated with processing amended [REDACTED] returns for the CTFs' more than [REDACTED] affected participants; and (3) the potential compliance costs which would be incurred with respect to those affected CTF participants who do not voluntarily file amended returns as a result of receiving corrected Forms K-1 for [REDACTED].

Accordingly, the parties have agreed to enter into the attached closing agreement that requires [REDACTED] to pay a "compliance fee" in the amount of \$[REDACTED]. The compliance fee constitutes the amount of Federal tax that the Commissioner would have received had [REDACTED] issued the correct tax information to the CTF participants on their respective Forms K-1 for [REDACTED]. We emphasize that the compliance fee payment is neither made nor accepted in payment of any Federal income tax liability of any CTF or any of their participants. The term used for the payment ("Compliance Fee") is critical to prevent the payment from being posted to a master file account.

The closing agreement reflects language strictly prohibiting [REDACTED] from claiming any deduction for payment of the compliance fee. In addition, the closing agreement requires [REDACTED] to indemnify the Service in the event a CTF or CTF participant receives a refund arising from any correction in the reporting of capital gains and losses referred to in the closing agreement.

District Counsel anticipates that the attached closing agreement will be executed by the parties, and the compliance fee paid by [REDACTED] at a meeting tentatively scheduled for the last week of [REDACTED]. District Counsel will advise QMS of the meeting's exact date and time. Please note that District Counsel discussed this matter with George Mullin on [REDACTED] and previously discussed this matter with Brian Finn in [REDACTED]. Both agreed to execute the proposed closing agreement on behalf of the District Director based on the recommendation of District Counsel.

Please be advised that this memorandum is subject to the post-review procedures of the Office of Chief Counsel. If the advice reflected in this memorandum is altered or revised, you will be contacted by District Counsel and advised of such changes within ten days. In any event, the closing agreement will not be executed until the expiration of the ten day post-review period. If you have any questions regarding this document, or the attached closing agreement, please contact Alan S. Kline at (215) 597-3442.

H. STEPHEN KESSELMAN
District Counsel

By: 

ALAN S. KLINE
Senior Attorney

By: 

JOSEPH M. ABELE
Assistant District Counsel

cc: Michael Corrado
Assistant Regional Counsel (TL)

Attachments:
As stated